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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. THESSALONIAN CATRELL LOVE, Defendant and Appellant.	A152611 (Mendocino County Super. Ct. Nos. 15-83629-A, 16-86031-B)

Defendant Thessalonian Catrell Love was convicted of trafficking of a minor, arranging to meet with a minor for lewd purposes, communicating with a minor with the intent to commit a lewd act, and dissuading a witness.

He raises numerous issues on appeal: He maintains the human trafficking statute is unconstitutionally vague. He claims the trial court erred in denying his motion for mistrial after a number of jurors heard news of his escape during trial, in admitting evidence of his escape and in instructing the jury on flight. He asserts evidence of prior uncharged acts involving other minors, although admissible, should have been excluded under Evidence Code section 352. He claims insufficient evidence supports his conviction of dissuading a witness. He maintains the court erred in denying his *Romero*[1] motion. And he asserts the crimes of contacting a minor with the intent to engage in lewd conduct and arranging to meet with a minor to engage in lewd conduct were based on an

[1] *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

indivisible course of conduct, and therefore the court erred in imposing consecutive sentences. In supplemental briefing, defendant further asserts the court erroneously imposed fines and fees without a determination of his ability to pay.

We conclude none of defendant's claims have merit, and affirm.[2]

BACKGROUND

This case arose out of an online "catfishing" scheme[3] involving defendant and then 15-year-old P.V., who lived in Point Arena with her mother and sister. P.V., a "quiet person," attended a small charter school. She owned a cell phone, a tablet, and a laptop.

P.V. received a message on Facebook from one of her Facebook "friends" named "Naomi Orozco," asking to be " 'texting buddies.' "[4] P.V. agreed, and they began to exchange messages. "Orozco," whose profile picture showed a girl wearing a pink dress, stated she was 16 years old and from California. P.V. responded she was 15 years old and from Point Arena. They began communicating through a messaging application called "Kik" and through text messages.

At some point, the messages became more personal. "Orozco" said she was bisexual and asked P.V. to send nude photographs, which P.V. did. "Orozco" then sent P.V. a Kik message stating, " 'I'm a guy' " and telling her to " 'pull those sexy big titties out.' " P.V. posted a screenshot of the message on Facebook, and warned " 'It's a he. Block him, everyone. She'll hack your account.' "

P.V. did not speak to "Orozco," later identified as defendant, for about a week. But then defendant called her and said they should be friends. He asked for nude

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[2] Defendant has also appealed from convictions of one count of an attempted criminal threat and two counts of attempted dissuasion of a witness in another case (Case No. A153233). We have decided the issues in that appeal in a separate opinion.

[3] Defendant states "catfishing" is defined by Wikipedia as " 'a type of deceptive activity where a person creates a false identity on a social network account, for nefarious purposes.' "

[4] Although identified on Facebook as a "friend," P.V. did not know the individual identified as "Naomi Orozco."

photographs of her breasts, which P.V. sent. At that point, defendant told P.V. he was 25 years old. After a few days, P.V. considered defendant to be her boyfriend. They told each other " 'I love you,' " and she continued to send him nude pictures when he asked for them.

Defendant told P.V. to call him "Andy" or "Shi gui" and to use his "Shi gui" Kik account. He told P.V. he did not want to tell her his real name because he did not trust girls.

P.V. and defendant often fought, and he would call her names including "whore, slut, hoe." P.V. continued to send him nude pictures, because otherwise defendant "would get mad" and threaten to post the photographs he already had or put her number "on websites so they could text me." He made explicit demands regarding sexual activities he wanted P.V. to perform with him or with other people, including demanding she perform oral sex on "his other friends . . . [¶] . . . [¶] so he could get money." When P.V. told him she was too young for "the sexual stuff," defendant responded he had "seen movies with 13 year-olds doing stuff to older guys."

During this time period, P.V. and her mother were arguing, in part because P.V. was spending so much time on her cell phone. In mid-October, P.V.'s mother took her cell phone away. P.V. was worried she would be sent to live with her father in North Dakota.

P.V. continued to communicate with defendant on her tablet. She told him she was afraid she would be sent to North Dakota. He responded he would not continue to "date" her if that happened, which upset P.V. They discussed various plans involving P.V. leaving with defendant. The final plan involved defendant taking a Greyhound bus to Point Arena, where P.V. would get on the bus with him and leave. Defendant agreed he would tell P.V. his real name when she was on the bus with him. They set a date to meet at the basketball courts near P.V.'s home. Defendant told her if she "told anyone he would shoot up [her] house," but then he said he was "kidding."

P.V. went to the basketball courts at 5:00 a.m. to meet defendant on the specified date, but he was not there. They had planned to meet earlier, at 3:00 or 4:00 a.m., so she was late.

Later that day, a secretary who worked in the front office at the high school P.V. attended answered a call from a man who said he was P.V.'s cousin. He wanted the secretary to "set up an appointment to have him meet [P.V.] at the gym to drop off keys." That message was not relayed to P.V. The following day, a man came to the school office and said he was P.V.'s step-brother and wanted to leave a phone in an envelope for her. The secretary said they would give her the cell phone. At trial, the secretary identified the man who had called and appeared at the school as defendant.

P.V.'s mother received a telephone call from the school principal, stating, "they were concerned that . . . her older step-brother had dropped off a phone to her and they were aware [P.V.'s mother] had taken away her phone." P.V. does not have a step-brother, and her mother waited for her to return from school and asked her to produce the phone. P.V.'s mother then called P.V.'s father and the Mendocino County Sheriff's office.

One sheriff's deputy interviewed P.V. and her mother, while another located defendant, who was on probation with a search condition based on a prior arson conviction. Defendant had an iPod and two Greyhound bus tickets to Anaheim in the names "Alicia Cortez" and "Andrew Cortez." After reading him his *Miranda* rights, the deputies questioned him. Defendant first stated he did not know a girl named P.V., but when deputies asked him about the disposable cell phone that had been dropped off at the high school, he said it was for P.V.

Law enforcement conducted a forensic search of defendant's iPod, his laptop computer, P.V.'s cell phone, and the cell phone left by defendant at the high school. The iPod contained a Kik conversation between defendant (identified as Shi gui) and P.V., and photographs of P.V.'s breasts. The forensic search also revealed other conversations with girls who identified themselves as minors in which defendant used vulgar language,

threatened them, and demanded they send nude pictures or he would post pictures they had already sent.

While defendant was in custody, a sheriff's deputy who was scanning inmate mail found a four-page handwritten letter from defendant to P.V. In it, defendant stated in part, "I'm stuck in this fuckn racist ass county. Because of yo mama, I'm in jail, I been in jail for 6 mnths. [L]ook I am just going to get straight to the point, this is bullshit that I am in here becos of what your telling the [] investigators & the DA & cops, I didn't even do shit. . . . [L]ook I'm not tryna argu with you or disrespect you, but all I'm saying is, I hope you can forgive me for whatever happened, I don't mean to bother you or yo mom or yo sister but all I'm saying is I hope you can get yo mom too [*sic*] drop the charges. . . . Look [P.V.] my life is on the fuckn line, & I didn't even do shit. . . . [If] you get this letter, then don't show Anyone! Do not show yo Mom, Sister, Friends, the cops, No one. . . . Please write me back after you get my letter . . . I trust you can write me a letter without fucking this up! I gave you one little thing to do [which] was too [*sic*] be on time after you told me to meet you at the MTA stop, & you fucked it up! You fucked a simple task up. . . . Please figure out a way to calm yo bitch ass mom down & try too talk some [sense] into her head & get her to drop the charges. . . . [T]ry to get her to drop the charges, & I will obey the restraining order, I will stay away from your family as long as you can get yo mom to drop the charges, BTW, I miss the fuck outta you I love you & care for you & still want you & I wish yo mom was one of those parents that allows parents consent. . . . [Y]ou will be 18 in 2 years well. . . . I hope you can still care for me like I care for you, so fuck the police, fuck the Judge [], fuck the DA, or them [] investigators, All I'm worried about is getting outta here & [heart drawing] you. . . . [I]f I'm wrong & you still don't love me, or you Never have loved me & this was just a trap, then that's cool too because . . . I'll see you real soon."

Defendant chose to testify at trial and stated he met P.V. through social media "friends" who were involved in "catfishing" her and other girls. He testified "what they were technically doing was an online hoax, like a prank." Defendant obtained P.V.'s contact information and "ended up texting her individually. . . ." He told her "I don't

know if you're aware you're being catfished. I'm a guy." According to defendant, "she was pretty aware of something kind of awkward going on, and she wasn't upset about it as much." His "friends," however, were upset, asking, " 'why did you squeal.' "

Defendant claimed to be an aspiring rapper, which is why he "kind of like[s] vulgar language and stuff like that" and felt comfortable using explicit language. According to defendant, P.V. "didn't mind the way I spoke to her." He explained that "[w]hen I call girls a hoe I'm not technically like trying to like put it to the fact that . . . you're like a prostitute, you're nasty like a whore. . . . [¶] It's just a new trend is what people are saying. . . . [It] means you're a dominant girl, you're a main chick."

Defendant claimed P.V. told him she was a senior in high school, but never said she was 15 years old. If "there was some type of statement or anything written that this girl is underage, I would have punched the brakes. . . . [T]hat's not the type of individual that I see myself carrying as. . . ." He agreed, however, that a few years earlier, he had engaged in "some raunchy and sexually explicit communications with girls [who] told [him] they were 15 or 16." He "may say these things, but [he] wouldn't cross that line, [he] wouldn't want to do any of these sexual activities or anything like that." When he went to the high school to drop off the phone for P.V., he "overheard" she was a sophomore. He decided "to tell her wait, hold up. Before anything, how old are you?" "But it slipped [his] mind . . . [because he] was mesmerized," and he never asked her age.

After defendant's first day of testimony, he escaped from custody as he was being transported from the court back to county jail. The following day, the court questioned jurors about whether they had "receive[d] any information about this case in any form." A number of them had heard about the escape. The court admonished the jurors, and denied the defense motion for mistrial.

A courthouse surveillance video showing defendant escaping was admitted into evidence and played for the jury.

The jury found defendant guilty of communicating with a minor for the purposes of committing specified sex offenses (Pen. Code, § 288.3, subd. (a)),[5] arranging a meeting with a minor for the purposes of engaging in lewd and lascivious behavior (§ 288.4, subd. (b)), attempting to dissuade a witness from testifying (§ 136.1, subd. (b)(2)), and trafficking of a minor for a commercial sex act (§ 236.1, subd. (c)(1)). The jury also found true the special allegation that defendant acted with malice and used or threatened to use force in attempting to dissuade the witness (§ 136.1, subd. (c)(1)).

In a separate case, defendant was charged with one count of escape and it was alleged he had one prior strike conviction. (§§ 4532, subd. (b)(1), 1170.12.) Defendant pleaded no contest to the charge and admitted the strike.

The court sentenced defendant in both cases to a total of 35 years in state prison, and imposed various fines and fees.

DISCUSSION

The Human Trafficking Statute is Not Unconstitutionally Vague

Defendant maintains section 236.1, subdivision (c), is facially void for vagueness. He asserts the statute incorporates the definition of pandering and the jury was instructed that pandering was an underlying " 'target offense,' " but the statute "failed to give him fair notice of what punishment he would face, because pandering provides a lesser penalty than trafficking."[6]

" '[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. [Citations.] Although the doctrine focuses both on actual

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[5] All further statutory references are to the Penal Code, unless otherwise indicated.

[6] Although defendant acknowledges he failed to raise this issue in the trial court, " '[w]e have discretion . . . to address a pure question of law raised for the first time on appeal.' " (*Kaura v. Stabilis Fund II, LLC* (2018) 24 Cal.App.5th 420, 430.) We address the issue on the merits to foreclose any ineffective assistance of counsel claim by defendant.

notice to citizens and arbitrary enforcement, we have recognized recently that the more important aspect of the vagueness doctrine "is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement." [Citation.] Where the legislature fails to provide such minimal guidelines, a criminal statute may permit "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." ' " (*People v. Brown* (2017) 14 Cal.App.5th 320, 336 (*Brown*).)

Section 236.1, subdivision (c) provides in part: "A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking." A commercial sex act is "sexual conduct on account of which anything of value is given or received by a person." (§ 236.1, subd. (h)(2).) Trafficking a minor triggers a punishment triad of five, eight, or 12 years, and a fine up to $500,000. (*Id*., subd. (c)(1).) If force or fear is used, the punishment is 15 years to life, and a fine of up to $500,000. (*Id*., subd. (c)(2).)

Pandering is punished less harshly. Section 266i, subdivision (a)(6) provides that any person who does the following is guilty of pandering: "Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution." Pandering an adult or a minor 16 years or older triggers a punishment triad of three, four, or six years. (*Id*., subds. (a), (b)(1).) Pandering a younger minor triggers a punishment triad of three, six, or eight years. (*Id*., subd. (b)(2).) A panderer is subject to a fine of up to $5,000. (§ 266k, subd. (a).)

Defendant concedes the same constitutional challenge he now makes to section 236.1 was rejected in *Brown*. In that case, the defendant also contended "section 236.1 is void for vagueness because, as applied to him in this case, it incorporated the definition of pandering as provided by section 266i. The jury was instructed that pandering was the underlying sex transaction for which defendant's liability under section 236.1—if any—

would attach. He contends he was not given fair notice of what punishment he might face because pandering provides a lesser penalty than trafficking." (*Brown*, *supra*, 14 Cal.App.5th at p. 336.) *Brown* concluded otherwise, relying on *United States v. Batchelder* (1979) 442 U.S. 114 (*Batchelder*). (*Brown*, at pp. 336, 338–339.)

As did the defendant in *Brown*, defendant tries to distinguish *Batchelder*, which *Brown* concluded was dispositive. "At issue in *Batchelder* were 'two overlapping provisions of the Omnibus Crime Control and Safe Streets Act of 1968 (Omnibus Act). Both prohibit convicted felons from receiving firearms, but each authorizes different maximum penalties. We must determine whether a defendant convicted of the offense carrying the greater penalty may be sentenced only under the more lenient provision when his conduct violates both statutes.' (*Batchelder*, *supra*, 442 U.S. at pp. 115–116. . . .) A lower court had concluded the lesser punishment should be applied as a matter of congressional intent, including the need to avoid the constitutional doubt that might ensue if prosecutors had unfettered discretion to charge defendants under either statute. (*Id.* at pp. 116–117. . . .) The high court unanimously disagreed, in part holding: 'It is a fundamental tenet of due process that "[no] one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." [Citation.] A criminal statute is therefore invalid if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." [Citations.] So too, vague sentencing provisions may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute. [Citations.]['] [¶] 'The provisions in issue here, however, unambiguously specify the activity proscribed and the penalties available upon conviction. [Citation.] That this particular conduct may violate [two statutes] does not detract from the notice afforded by each. Although the statutes create uncertainty as to which crime may be charged and therefore what penalties may be imposed, they do so to no greater extent than would a single statute authorizing various alternative punishments. So long as overlapping criminal provisions clearly define the conduct prohibited and the punishment authorized, the notice requirements of the Due

Process Clause are satisfied.' (*Batchelder*, [] at p. 123. . . .)" (*Brown*, *supra*, 14 Cal.App.5th at p. 338.)

Brown concluded, "That is exactly the situation in this case. Two statutes each clearly advised defendant of conduct that was criminal, and of the possible penalties each provided." (*Brown*, *supra*, 14 Cal.App.5th at p. 339.)

Brown (and *Batchelder*) also addressed the claim made by defendant here that section 236.1 allows a prosecutor to pursue his or her " 'personal predilections.' " " '[A] prosecutor's discretion to choose between [the two statutes] is not "unfettered." Selectivity in the enforcement of criminal laws is, of course, subject to constitutional constraints. And a decision to proceed under [the statute with the more severe punishment] does not empower the Government to predetermine ultimate criminal sanctions. Rather, it merely enables the sentencing judge to impose a longer prison sentence than [the other statute] would permit and precludes him from imposing the greater fine authorized by [the other statute]. More importantly, there is no appreciable difference between the discretion a prosecutor exercises when deciding whether to charge under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements. . . . The prosecutor may be influenced by the penalties available upon conviction, but this fact, standing alone, does not give rise to a violation of the Equal Protection or Due Process Clause. [Citations.] Just as a defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution, neither is he entitled to choose the penalty scheme under which he will be sentenced.' (*Batchelder*, *supra*, 442 U.S. at pp. 123–125. . . .)" (*Brown*, *supra*, 14 Cal.App.5th at pp. 339.) "Our Supreme Court has followed *Batchelder* and permitted prosecutors to make charging decisions that implicate different penalty provisions, so long as those decisions are not made for invidious reasons (e.g., race, gender, etc.). (See *People v. Wilkinson* (2004) 33 Cal.4th 821, 834–836 . . . [rejecting equal protection claim]; see also *People v. Superior Court (Caswell)* (1988) 46 Cal.3d 381, 395 . . . ['It is axiomatic the Legislature may criminalize the same conduct in different ways'].)" (*Brown*, at pp. 339–340.)

In sum, even had defendant raised the issue in the trial court, we perceive no reason to depart from *Brown*'s reasoned analysis. We therefore conclude section 236.1 is not unconstitutionally void for vagueness.

Defendant's Escape from Custody

As we have recited, after his first day of testifying, defendant escaped from custody while he was being escorted from the courthouse to be transported back to jail.

Following his escape, local law enforcement sent out computer-generated calls informing Ukiah residents that an inmate had escaped, and advising them to stay indoors. The Facebook pages for both the Mendocino County Sheriff and the Ukiah Police Department also had information about defendant's escape, and requested that the community share the information. Additionally, a local newspaper published a story about the escape the evening it happened.

Defendant was apprehended the following morning around 7:00 a.m.

Before trial commenced that morning, the trial court questioned all 12 jurors and both alternate jurors as to whether they had "receive[d] any information or see[n] any news coverage concerning this case." Most jurors had heard or seen information about defendant's escape. Most of these jurors received unsolicited information, either from friends, family, or overheard public conversations. Some of these jurors sought out more information about the escape, while others did not. One juror "went to see where he had escaped to due to the location of my house. I thought it was important that I be updated on that." In response to the court's questioning and admonishments, all stated they would disregard the information and it would not affect their ability to be fair and impartial.

Defense counsel moved for a mistrial on the ground a majority of the jurors "had some very substantial contact regarding what had happened." The court denied the motion.

Defendant makes three claims of error arising from this series of events. He contends the trial court abused its discretion in denying his motion for mistrial, claiming the incident was presumptively and incurably prejudicial because some jurors engaged in

misconduct. He further asserts the court "exacerbated the error" by admitting evidence of his escape and by instructing the jury on flight as evidence of consciousness of guilt.

Mistrial motion: "A trial court should grant a motion for mistrial 'only when " 'a party's chances of receiving a fair trial have been irreparably damaged' " ' [citation], that is, if it is 'apprised of prejudice that it judges incurable by admonition or instruction.' [Citation.] 'Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions.' [Citation.] Accordingly, we review a trial court's ruling on a motion for mistrial for abuse of discretion." (*People v. Avila* (2006) 38 Cal.4th 491, 573.)

"[W]hen misconduct involves the receipt of information from extraneous sources, the effect of such receipt is judged by a review of the entire record, and may be found to be nonprejudicial. The verdict will be set aside only if there appears a substantial likelihood of juror bias. Such bias can appear in two different ways. First, we will find bias if the extraneous material, judged objectively, is inherently and substantially likely to have influenced the juror. [Citations.] Second, we look to the nature of the misconduct and the surrounding circumstances to determine whether it is substantially likely the juror was actually biased against the defendant. [Citation.] The judgment must be set aside if the court finds prejudice under either test." (*In re Carpenter* (1995) 9 Cal.4th 634, 653.)

In denying the motion, the trial court explained: "As to the request for the mistrial I'll deny that request for the following reasons: I know it's a subjective assessment, but I disagree with the characterization that any juror had had substantial exposure to this outside information. [¶] The computerized phone call that was generated last night was like a reverse 911 call from law enforcement to all the citizens of the community, the sheriff's office apparently determined that that was appropriate. And, therefore, it was very difficult for anybody in the area to avoid, although several people who live in Ukiah did not receive the call at all or did not receive it directly. [¶] I don't think any juror that I questioned showed any reservations about their ability to disregard whatever information any of them may have received. I think it was not prejudicial to the extent that it didn't involve a crime against another person having been committed or some

other outside information that was at all similar to the charges that we are exploring in this trial. [¶] And I'm going to deny a mistrial for purposes based on any suggestion that any juror or the jury as a whole has been tainted by the events. [¶] Also, I will say the events were caused by [defendant], by [defendant] escaping from the custody of a correctional officer while he was being escorted out of the building after the . . . jury trial had recessed for the day. [¶] So to the extent the conduct of the defendant can generate a mistrial, I'm going to deny that. Especially when the conduct of the defendant was of this kind of nature."

The Attorney General asserts the motion for mistrial was properly denied because any juror misconduct was invited by defendant, relying on *People v. Hines* (1997) 15 Cal.4th 997. In that case, the defendant telephoned two jurors after the guilt phase of trial but before the penalty phase. One answered the phone and spoke with the defendant, while the other told his wife not to accept the collect call from the defendant and reported it to the sheriff's office. (*Id*. at pp. 1053–1054.) The defendant claimed both jurors had committed misconduct. (*Id*. at p. 1054.) The court concluded "[d]efendant is barred from complaining about any conceivable misconduct by [the juror] in accepting his call because he invited any 'misconduct' by making the telephone call in the first place. . . . 'As a matter of policy, a defendant is not permitted to profit from his own misconduct.' " (*Id*. at p. 1054.) Similarly, in *People v. Gomez* (1953) 41 Cal.2d 150, the defendant attempted to escape during voir dire, creating "considerable confusion in the courtroom. An unidentified woman loudly said, 'I knew he was going to do it all the time.' " (*Id*. at p. 162.) The court rejected the defendant's claim of error, noting: "it was defendant himself who precipitated the courtroom disturbance and the doctrine of invited error applies." (*Ibid.*)

Similarly here, it was defendant's own actions in escaping from custody that created the situation in which law enforcement attempted to alert all local residents of his escape. Accordingly, we agree defendant invited the conduct about which he now complains.

Furthermore, even if certain jurors' actions may have constituted misconduct, the record demonstrates the receipt of information regarding defendant's escape was not prejudicial. When questioned by the trial court, all the jurors who had heard information about the escape stated they would disregard the information, be fair and impartial, and decide the case based only on evidence presented in court. The trial court also instructed the jury: "You must disregard anything you saw or heard when the court was not in session, even if it was done or said by one of the parties or a witness."

Accordingly, the trial court did not abuse its discretion in denying defendant's mistrial motion.

Evidence of and Instruction on Flight: Defendant failed to object to the admission of evidence of his escape and consequently has forfeited any claim of error on appeal. Even had he not forfeited the issue, the evidence was clearly relevant and admissible. (*People v. Anderson* (2018) 5 Cal.5th 372, 391 ["[e]vidence showing consciousness of guilt, such as flight or escaping from jail," is generally admissible].) Indeed, defendant does not dispute the evidence was relevant. Rather, he maintains it was "so unduly prejudicial that it rendered [his] trial fundamentally unfair."

"The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence. '[A]ll evidence which tends to prove guilt is prejudicial or damaging to the defendant's case. The stronger the evidence, the more it is "prejudicial." The "prejudice" referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying [Evidence Code] section 352, "prejudicial" is not synonymous with "damaging." ' " (*People v. Karis* (1988) 46 Cal.3d 612, 638, italics omitted.)

Thus, where a defendant's escape involves "no threats, acts of violence, or other inflammatory features . . . the trial court act[s] within its discretion in permitting the jury to consider it as consciousness of guilt regarding the other offenses." (*People v.*

Carrasco (2014) 59 Cal.4th 924, 963.) There were no inflammatory attributes to defendant's escape here.

Accordingly, the trial court did not abuse it discretion in admitting the challenged evidence. (See *People v. Kipp* (2001) 26 Cal.4th 1100, 1125–1126.) For the same reasons we reject defendant's challenge to the jury instruction on flight. (See *Id.* at p. 1127.)

Admission of Prior Uncharged Offenses

Following an Evidence Code section 402 hearing, the trial court admitted evidence of conversations on messaging applications between defendant and two other minors. Defendant does not dispute that this evidence was relevant and admissible under Evidence Code sections 1101 and 1108. Rather, he maintains the admission of such evidence under Evidence Code section 1108 violated his federal constitutional rights to due process and equal protection, and that the court abused its discretion by failing to exclude the evidence under Evidence Code section 352.

Defendant acknowledges that our Supreme Court has upheld the constitutionality of Evidence Code section 1101. (*People v. Falsetta* (1999) 21 Cal.4th 903, 907.) He also "recognizes than an equal protection challenge to Evidence Code section 1109, a parallel statute to Evidence Code section 1108," was rejected in *People v. Johnson* (2000) 77 Cal.App.4th 410, 412. Citing *People v. Miramontes* (2010) 189 Cal.App.4th 1085, he states he has raised these constitutional issues solely to preserve them for federal review. We therefore "need not discuss [these issues] here. [¶] . . . While we understand the purpose of raising these issues, we must follow the directions of our Supreme Court and reject [the] due process contentions." (*Id.* at pp. 1103–1104.)

Turning to defendant's Evidence Code section 352 challenge, he "acknowledges the relevance of evidence of the uncharged Internet communications between [him] and two minor females," as admitting the evidence was relevant to show "(1) he knew he was communicating with minor females in the charged and uncharged acts; (2) he intended to engage in sexual conduct with minors; and (3) the charged and uncharged acts involved a common scheme or plan." He asserts, however, that the evidence was "extraordinarily

inflammatory" and "went far beyond what was necessary to prove [his] identity, intent, common scheme or plan."

Defendant first claims the uncharged acts "included [his] statements of intent to force a minor female to orally copulate him," while the charged crimes "did not include any charges of forcible oral copulation." The present case did involve, however, defendant's demands that P.V. orally copulate him, and orally copulate his friends "so he could get money."

Defendant next maintains the uncharged offenses were highly inflammatory because they "involved extremely callous and sadistic conduct in which [he] . . . demanded that [another minor] send him numerous naked photographs and threatened to post her nude photographs on the Internet if she failed" to do so. But this is precisely what defendant did in this case. And while these other acts are disturbing, the conduct is not more prejudicial than probative under Evidence Code section 352. As we have previously explained, " 'prejudicial' is not synonymous with 'damaging.' " (*People v. Karis, supra*, 46 Cal.3d at p. 638.) After concluding the evidence was relevant because it showed motive, modus operandi, and intent, the trial court concluded: "to the extent that there's any prejudice, it's not undue prejudice. And that's what must be shown under [Evidence Code section] 352 for me to exclude it in light of its probative value. And, again, we're not seeing the actual images themselves. We're either going to listen . . . in the form of an oral reading of a document or perhaps a Xerox being handed out in the form of documentary evidence. [¶] I don't think this is going to inflame the emotions of the jury. The jury has already heard they're going to hear about explicit conversation of sexual conduct."

Accordingly, the trial court neither erred nor abused its discretion in admitting the evidence of other misconduct.

Substantial Evidence of Defendant's Attempt to Dissuade a Witness by Threat of Force

Defendant also challenges the sufficiency of the evidence to sustain his conviction of dissuading a witness by implied threat of force. (§ 136.1, subd. (c)(1).)

Section 136.1 provides in relevant part: "any person who . . . [¶] . . . [¶] . . . Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. [¶] . . . [¶] (c) Every person doing any of the acts described in subdivision (a) or (b) knowingly or maliciously under any one or more of the following circumstances, is guilty of a felony. . . . : (1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim. . . ." (§ 136.1, subds. (a)(2), (c)(1).)

"In reviewing a claim for sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime or special circumstance beyond a reasonable doubt. We review the entire record in the light most favorable to the judgment below to determine whether it discloses sufficient evidence—that is, evidence that is reasonable, credible, and of solid value—supporting the decision, and not whether the evidence proves guilt beyond a reasonable doubt. [Citation.] We neither reweigh the evidence nor reevaluate the credibility of witnesses. [Citation.] We presume in support of the judgment the existence of every fact the jury reasonably could deduce from the evidence. [Citation.] If the circumstances reasonably justify the findings made by the trier of fact, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding." (*People v. Jennings* (2010) 50 Cal.4th 616, 638–639.)

As defendant concedes, " 'There is, of course, no talismanic requirement that a defendant must say "Don't testify" or words tantamount thereto, in order to commit the charged offenses. As long as his words or actions support the inference that he . . . attempted by threat of force to induce a person to withhold testimony [citation], a defendant is properly' convicted of a violation of section 136.1, subdivision (c)(1)." (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1344.) Indeed, words "have more than a plain meaning. . . . [They] also carry with them an inherent baggage of connotation. . . ." (*Ibid*.)

Defendant does not dispute that he attempted to dissuade P.V. from testifying. Instead, he asserts nothing in his jailhouse letter to her constituted an implied threat of force. At most, he claims, "the words were . . . ambiguous as to whether the dissuading involved any implied threat of force," and the "surrounding circumstances were even more ambiguous."

To the contrary, defendant's letter, in the context of the "surrounding circumstances," is substantial evidence that his attempt to dissuade P.V. from testifying involved an implied threat of force. Those circumstances included defendant's prior multiple threats, in extremely graphic terms, to post nude photographs of P.V. if she did not send him more such photographs. Defendant also had threatened to "shoot up" her house if she told anyone they planned to meet and run away.

Against this backdrop, we turn to defendant's letter to P.V., which stated in part: "*I hope you can get yo mom too* [*sic*] *drop the charges*. . . . Look [P.V.] . . . my life is on the fuckn line, & I didn't even do shit. . . . [If] you get this letter, then don't show Anyone! Do not show yo Mom, Sister, Friends, the cops, No one. . . . Please write me back after you get my letter . . . I trust you to write me a letter without fucking this up! I gave you one little thing to do [which] was too [*sic*] be on time After you told me to meet you at the MTA stop, & you fucked it up! You fucked A simple task up. . . . Please figure out a way to calm yo bitch ass mom down & try too talk some [sense] into her head & get her to drop the charges. . . . *[T]ry to get her to drop the charges, & I will obey the restraining order, I will stay away from your family as long as you can get yo mom to drop the charges,* BTW I miss the fuck outta you I love you & care for you & still want you & I wish yo mom was one of those parents that allows parents consent []. [Y]ou will be 18 in 2 years well. . . . I hope you can still care for me like I care for you, so fuck the police, fuck the Judge [], fuck the DA, or them [] investigators, All I'm worried about is getting outta here & [heart drawing] you. . . . [*I*]*f I'm wrong & you still don't love me, or you Never have loved me & if this was just a trap, then that's cool too because . . . I'll see you real soon.*" (Italics added.)

We have no difficulty in concluding that the language in the letter could reasonably be understood to be a threat, particularly given the conduct that preceded it.

Defendant claims the "prosecution relied solely on the ambiguous statement, 'I'll see you real soon,' in support of the theory that [he] dissuaded [P.V.] by an implied threat of force." Although the prosecutor referenced this statement in closing, the entire letter was admitted into evidence, and the letter contained additional threatening language: "Please figure out A way to calm yo bitch ass mom down & try too [*sic*] talk some [sense] into her head & get her to drop the charges. . . . *[T]ry to get her to drop the charges, & I will obey the restraining order, I will stay Away from your family as long as you can get yo mom to drop the charges."* (Italics added.)

In totality, the evidence amply supports defendant's conviction of dissuading a witness by implied threat of force.

Denial of Defendant's* Romero *Motion

Defendant next contends the trial court abused its discretion in denying his motion to strike his prior conviction under *Romero, supra,* 13 Cal.4th at page 489 and section 1385. He suffered this prior conviction, for arson, in 2010, and was on probation in that case when he was arrested in the instant case.

"Under section 1385, subdivision (a), a 'judge . . . may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed.' . . . '[A] court's discretionary decision to dismiss or to strike a sentencing allegation under section 1385 is' reviewable for abuse of discretion." (*People v. Carmony* (2004) 33 Cal.4th 367, 373 (*Carmony*).)

"[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law, on its own motion, 'in furtherance of justice' pursuant to Penal Code section 1385(a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as

though he had not previously been convicted of one or more serious and/or violent felonies." (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

As defendant recognizes, we review a ruling on a *Romero* motion for abuse of discretion. (See *Carmony*, *supra*, 33 Cal.4th at p. 376.) "In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, ' "[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." ' [Citations.] Second, a ' "decision will not be reversed merely because reasonable people might disagree. . . ." ' [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*Id.* at pp. 376–377.)

Defendant maintains the trial court should have favorably exercised its discretion because "the victim was not seriously injured," he was "youthful at the time of the offense," his punishment was "disproportionate to the severity of the offense [of human trafficking]," he was a "passive participant" in the 2010 arson, and the court "disregard[ed] the extensive evidence of [his] developmental disability."

We first consider defendant's claim that he was only a "passive participant" in the prior arson and his assertion the trial court agreed with this characterization. Although the probation report in the arson case described defendant as a passive participant, the trial court here, contrary to defendant's assertion, *disagreed* with that assessment. The court stated: "I disagree that this was a passive participant in an arson in—I think it was in San Bernardino. One of the codefendants testified that [defendant] wanted to set the park on fire also and he wanted to film it, and the three of them together went. They had contacted this gentleman in his apartment or his home earlier in the evening. The gentleman was dismissive of them. They returned. [¶] There's some inference that they possibly attempted to forcibly enter his home. They didn't. Instead they broke a window, threw lighter fluid and a firecracker in the house that set the house on fire. The

house burned down. The man lost everything except his life. [¶] The evidence is clear from [the probation report] . . . that all three of them intended to go there and set fire to his home. . . . [Defendant] went there as an accomplice, as a co-conspirator to commit an arson and to film it." Indeed, while defendant did not set the fire, he filmed the incident to "put it on You Tube."

Defendant next asserts the record does not support the trial court's conclusion he caused P.V. "irreparable damage." He claims the fact that he never physically touched P.V., and the testimony of P.V.'s mother that P.V. was " 'okay,' but still fearful at night," demonstrate that P.V. was "not seriously injured."

While defendant did not inflict physical injury on P.V., the record amply supports the trial court's finding of irreparable damage. P.V. was a quiet 15-year-old girl who defendant admittedly "catfished," lured into an abusive online relationship, coerced into sending him nude pictures with a mixture of assertions of love and threats, and attempted to lure her away from home to engage in sexual acts. P.V. told the probation officer she "still feels a lot of anxiety over this case and defendant." P.V. stated that when defendant " 'got mad, he got really scary,' " and she remained " 'scared if he gets out that he'll come after us.' " The trial court found defendant "treated [P.V.] horrifically in those conversations and she was afraid of him, and like a lot of victims the manifestation of their fear is the agreement to do what their perpetrator asks them to do. I have no doubt in my mind that . . . he has caused irreparable damage to this 15-year-old. [¶] She will never forget this. Her mother will never forget this. She may never be able to trust anyone much less have any sort of personal security because of the fact that [defendant] is still out here in the world."

Defendant also claims the court disregarded evidence of his youth and "developmental disability," which he maintains militate in favor of striking his prior conviction. He asserts that while "physiologically" an adult, he has an I.Q. of 59 and "was functioning at the intellectual level of a nine to eleven year old."

Defendant was 19 years old at the time of the arson, and 25 years old at the time of the crimes here.

The record shows the court considered defendant's age and his mental, emotional, and intellectual issues. The court stated it had read his *Romero* motion, the attachments, and defendant's sentencing memorandum and its attachments. The attachments included psychological evaluations by psychologist Dr. Kastl, who opined defendant's cognitive functioning "appears to be of low-average caliber," and concluded he has a "mild neurocognitive disorder." He indicated defendant's grades had been in the "C-plus and B range." Although he reported defendant had an IQ score of 59, a second IQ test resulted in a score of 80. There was also an evaluation by Jessica Ferranti, M.D., an associate clinical professor of psychiatry at University of California, Davis. She opined that defendant's "thought process was linear and goal-directed," and there was "no evidence [of] cognitive deficits." She concluded he had "[a]ntisocial [p]ersonality [d]isorder" and attention-deficit/hyperactivity disorder, predominantly the hyperactive/impulsive type. The weight to be given to this information lay with the trial court.

Defendant lastly claims his "conduct pales in comparison to other examples of human trafficking." To the contrary, defendant was a 25-year-old man who manipulated and exploited the naiveté and vulnerabilities of a 15-year-old, threatened her, sought to have her engage in prostitution, blackmailed her into sending him nude photographs, and brazenly showed up at her high school. Once arrested, he escaped during trial, and he further attempted to dissuade the victim from testifying. That some human traffickers engage in even worse conduct, certainly does not demonstrate any abuse of discretion by the trial court here.

No Sentencing Error under Section 654

Defendant maintains his convictions of contacting a minor with intent to commit a lewd act (count one) and of arranging a meeting with a minor for a lewd purpose (count two) were part of an indivisible course of conduct with a common objective. He therefore concludes "imposition of consecutive sentences is inconsistent with the terms of section 654," and the sentence as to count one must be stayed.

Section 654 provides in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that

provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).) " 'It has long been established that the imposition of concurrent sentences is precluded by section 654 [citations] because the defendant is deemed to be subjected to the term of both sentences although they are served simultaneously.' " (*People v. Jones* (2012) 54 Cal.4th 350, 353, italics omitted.)

Section 654 "precludes imposition of multiple punishments for conduct that violates more than one criminal statute but which constitutes an indivisible course of conduct. [Citation.] Penal Code section 654 serves to match a defendant's culpability with punishment. [Citation.] Whether the provision 'applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.] We review the trial court's determination in the light most favorable to the respondent and presume the existence of every fact the trial court could reasonably deduce from the evidence.' " (*People v. Vang* (2010) 184 Cal.App.4th 912, 915–916.)

" 'Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.' " (*People v. Beamon* (1973) 8 Cal.3d 625, 637, disapproved on another grounds as stated in *People v. Mendoza* (2000) 23 Cal.4th 896, 908.) "[A] course of conduct divisible in time, although directed to one objective, may give rise to multiple violations and punishment." (*Id*. at p. 639, fn. 11.)

"[M]ultiple, separate sex crimes are not considered to be a single course of conduct under section 654 and thus each act may be punished separately. [Citation.] . . . [A] defendant cannot escape separate punishment by claiming all of the acts were committed pursuant to a broad objective of achieving sexual gratification. [Citation.] 'Such an intent and objective is much too broad and amorphous to determine the

applicability of section 654. Assertion of a sole intent and objective to achieve sexual gratification is akin to an assertion of a desire for wealth as the sole intent and objective in committing a series of separate thefts. To accept such a broad, overriding intent and objective to preclude punishment for otherwise clearly separate offenses would violate the statute's purpose to insure that a defendant's punishment will be commensurate with his culpability.' [¶] In other words, section 654 does not preclude separate punishment for multiple sex offenses which, although closely connected in time and part of the same criminal venture, are separate and distinct, and which are not committed as a means of committing any other sex offense, do not facilitate commission of another sex offense, and are not incidental to the commission of another sex offense." (*People v. Castro* (1994) 27 Cal.App.4th 578, 584–585, quoting *People v. Perez* (1979) 23 Cal.3d 545, 552–554.)

Defendant claims his intent in committing counts one and two was the same: "The lewd purposes for which [he] went to the meeting [with P.V.] were the same as those specified in count one" for contacting a minor to engage in a lewd act.

However defendant may attempt to paint his "intent," the two counts involved temporally distinct acts and involved different objectives. The first involved defendant's contact with P.V. over the course of several months, with the objective of obtaining child pornography and inducing her to orally copulate him and his friends. The second count involved defendant's efforts in arranging a meeting with P.V. for the purpose of transporting her away from her home to engage in lewd acts.

Thus, as the trial court stated at sentencing: "Each of these crimes in Case 83629 are independent of each other. I looked very closely at whether or not they should be run consecutively or concurrently, and I see they're all independent actions. They all represent different aspects of his conduct, some of it, of course, directed at the minor involved in this case. . . ."

Accordingly, the court did not err in imposing consecutive sentences for counts one and two.

Imposition of Fines and Fees

In a supplemental brief, defendant asserts the trial court erred in imposing fines and fees without a determination that he had the ability to pay, citing *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*).

The court imposed a $10,000 restitution fine under section 1202.4, subdivision (b), the statutory maximum. It also imposed a $10,000 parole revocation fine under section 1202.45 (suspended pending defendant's successful completion of parole), a $160 court security fee under section 1465.8, and a $120 conviction assessment under Government Code section 70373.

In *Dueñas*, the defendant, a homeless probationer who suffered from cerebral palsy and was unable to work, was convicted of her fourth offense of driving with a suspended license. (*Dueñas*, *supra*, 30 Cal.App.5th at pp. 1160–1161.) At sentencing, she objected that she did not have the ability to pay fees and fines, produced undisputed evidence establishing her inability to pay, and requested a hearing on the issue. (*Id.* at pp. 1162–1163.) The court struck some fees, but imposed others it concluded were mandatory. (*Id*. at p. 1163.) On appeal, the appellate court concluded "due process of law requires the trial court to conduct an ability to pay hearing and ascertain a defendant's present ability to pay before it imposes court facilities and court operations assessments under Penal Code section 1465.8 and Government Code section 70373" and that while "Penal Code section 1202.4 bars consideration of a defendant's ability to pay unless the judge is considering increasing the fee over the statutory minimum, the execution of any restitution fine imposed under this statute must be stayed unless and until the trial court holds an ability to pay hearing and concludes that the defendant has the present ability to pay the restitution fine." (*Id*. at p. 1164.)

The Attorney General claims defendant forfeited the issue by not making a "present inability to pay" objection in the trial court.

In the wake of *Dueñas*, the Courts of Appeal have taken varying positions on forfeiture.

In *People v. Johnson* (2019) 35 Cal.App.5th 134, another division of this court concluded the defendant had not forfeited a "present ability to pay" challenge to a court security fee (§ 1465.8), a criminal conviction assessment (Gov. Code, § 70373), and a restitution fine of $300, stating "[t]here is a well-established exception to the forfeiture doctrine where a change in the law—warranting the assertion of a particular objection, where it would have been futile to object before—was not reasonably foreseeable." (*Johnson*, at pp. 137–138.) The *Johnson* court concluded the holding in *Dueñas* was not reasonably foreseeable. (*Ibid*.; accord *People v. Castellano* (2019) 33 Cal.App.5th 485, 489 ["When, as here, the defendant's challenge on direct appeal is based on a newly announced constitutional principle that could not reasonably have been anticipated at the time of trial, reviewing courts have declined to find forfeiture."].)

In *People v. Frandsen* (2019) 33 Cal.App.5th 1126, the appellate court reached the opposite conclusion. While acknowledging the exception to forfeiture where there has been a change in the law that was "not reasonably foreseeable," the *Frandsen* court concluded *Dueñas* did not represent a "dramatic and unforeseen change in the law governing assessments and restitution fines . . . [because] [s]ection 1202.4 expressly contemplates an objection based on inability to pay." (*Frandsen*, at p. 1153.)

In *People v. Gutierrez* (2019) 35 Cal.App.5th 1027 (*Gutierrez*), the appellate court found "it unnecessary to address any perceived disagreement on the forfeiture issue," explaining that both "*Castellano* and *Johnson* involved situations in which the trial court imposed the statutory *minimum* restitution fine." (*Id*. at pp. 1032–1033.) In *Gutierrez*, as in *Frandsen* and this case, "the trial court imposed the statutory *maximum* restitution fine." (*Id.* at p. 1033.)

A trial court is required to impose a minimum restitution fine of $300 for a felony conviction, but has discretion to impose a fine of up to $10,000. "The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than . . . ($300) and not more than . . . ($10,000). [¶] . . . [¶] The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so. . . . A defendant's

inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. *Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine*. . . . [¶] In setting the amount of the fine . . . *in excess of the minimum . . . the court shall consider all relevant factors, including, but not limited to, the defendant's inability to pay. . . . A defendant shall bear the burden of demonstrating his or her inability to pay*." (§ 1202.4, subds. (b)(1), (c), (d), italics added.) "Express findings by the court as to the factors bearing on the amount of the fine shall not be required." (§ 1202.4, subd. (d).)

Thus, as the *Gutierrez* court observed, "even before *Dueñas*, a defendant had every incentive to object to imposition of a maximum restitution fine based on inability to pay because governing law as reflected in the statute (§ 1202.4, subd. (c)) expressly permitted such a challenge." (*Gutierrez, supra,* 35 Cal.App.5th at p. 1033.) Accordingly, "even if *Dueñas* was unforeseeable (a point on which we offer no opinion), under the facts of this case [defendant] forfeited any ability-to-pay argument regarding the restitution fine by failing to object." (*Ibid*.) The court further pointed out, "[t]he same is true of the fees the court imposed. As a practical matter, if [defendant] chose not to object to a $10,000 restitution fine based on an inability to pay, he surely would not complain on similar grounds to an additional $1,300 in fees." (*Ibid*., fn. omitted.)

We agree with the reasoning of *Gutierrez* and reach the same conclusion here. Because the trial court imposed a restitution fine *above* the statutory minimum and defendant had a statutory right to object, his failure to do so resulted in a forfeiture of the issue on appeal.

DISPOSITION

The judgment is affirmed.

_____
Banke, J.

We concur:

_____
Humes, P.J.

_____
Margulies, J.

A152611, *People v. Love*